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Public Service Commission

July 21, 2003

VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Portals II, TW-A325
Washington, DC 20554

Re: CC Docket No. 02-6, Schools and Libraries Universal Service Support Mechanism

Dear Ms. Dortch:

     Forwarded herewith are Comments of the Florida Public Service Commission in the above referenced docket with regard to the Review of Rules Governing the Schools and Libraries Universal Support Mechanism.

     Should you have additional questions, please contact John Mann, the primary staff person in this docket, at (850) 413-6976.

                          Sincerely,

                          / s /

                          Cynthia B. Miller, Esquire
                          Office of Federal and Legislative Liaison

CBM:tys
cc: Brad Ramsay, NARUC
       Qualex International, Inc.
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In the Matter of	)	
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Schools and Libraries Universal Service Support	)	CC Docket No. 02-6
Mechanism	)	
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COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION
REGARDING THE REVIEW OF RULES GOVERNING
THE SCHOOLS AND LIBRARIES
UNIVERSAL SERVICE SUPPORT MECHANISM

The Florida Public Service Commission (FPSC) submits these comments in response to the

Notice of Proposed Rulemaking (FCC 03-101) released on April 30, 2003. In this Notice, the

Federal Communications Commission (FCC) seeks to review certain rules governing the schools

and libraries universal service support mechanism. It has initiated this review to ensure the

continued efficient and effective implementation of Congress' goals as established in the

Telecommunications Act of 1996 (the Act), and to explore a number of suggestions for improving

the safeguards of this worthwhile program.[1] In the first five years of the program (1998 thru 2002),

the Universal Service Administrative Company (USAC or the Administrator) has committed over

$10.3 billion in funds for the Schools and Libraries program.[2] Since its inception, the demand for

E-Rate funding has grown from $2.3 billion in the first year of the program to $5.736 billion in the

fifth year of the program.[3]

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[1] Since its inception in 1997, the number of schools connected to the Internet has increased from 14 percent to 87 percent. Source: FCC.

[2] Kellogg Consulting http://www.kelloggllc.com/erate/primer_02.pdf

[3] Id.

The comments urge the FCC to consider whether the following suggestions would improve the safeguards of the E-Rate program:

• USAC could make available additional data about the recipients of support and how these funds are used. This would likely build greater confidence that the E-Rate program is being operated fairly.

• In order to protect the integrity and resources of this Universal Service program, the FCC could establish a comprehensive audit program for the E-Rate fund.

• In an attempt to provide a more equitable distribution of E-Rate resources, the FCC could establish a state-by-state E-Rate cap.

• To ensure that targeted equipment purchases are remaining at the most needy institutions, the FCC and USAC could establish more comprehensive rules governing how and when E-Rate subsidized equipment can be transferred.

• To provide additional protection for the integrity of the program, the FCC and USAC could refine their rules for E-Rate consultants, the competitive bidding process, and the review process for the issuance of Service Provider Identification Numbers (SPIN).

• Lastly, to bolster outreach efforts, USAC could provide additional educational opportunities for all applicants on best practices for adhering to the E-Rate rules and attaining the goals of the E-Rate program.

Accountability

The FPSC believes that one way to deter waste, fraud, and abuse is to make the current program more transparent. Making available additional data about the recipients of support would

build greater confidence that the program is being operated fairly. Currently, it is difficult to acquire

data in significant detail and format. For example, a review of the USAC web site did not reveal,

by state, the amount of total funding for the schools and libraries universal service support

mechanism.[4] Without this information, it is difficult to determine how different states are faring

under the program. Another example is a lack of information, on a state-by-state basis, of the

number of school children who could benefit from the program. As this information is key in the

determination of program eligibility, it appears that making these data readily available would assist

the individual states in determining if they are receiving an equitable share of E-Rate funding.

The FPSC also believes that information should be made publicly available relating to what

specific services have been committed to an individual school or library. This information, as well

as the size of the school or library, would be of great use to increase the integrity and accountability

of the system. We also believe that USAC could strengthen the review process for the issuance of

Service Provider Identification Numbers. By enhancing this process, the program would benefit

from greater certainty that the entities or individuals who obtain a Service Provider Identification

Number are, in fact, legitimate companies that are eligible to provide services.

Auditing

According to a report from the Center for Public Integrity issued earlier this year, the Schools

and Libraries program is "honeycombed with fraud and financial shenanigans."[5] While we are

unsure of the veracity of these accusations, it does raise a red flag of suspicion about the accounting

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[4] http://www.sl.universalservice.org/

[5] Center for Public Integrity: Special Report - Phone fund for schools, libraries riddled with fraud by Bob Williams; http://www.public-i.org/dtaweb/report.asp?ReportID=492&L1=10&L2=10&L3=0&L4=0&L5=0

controls of the E-Rate program. And when the FCC's own Inspector General warns that the FCC does "not have the resources to guarantee that the program [is] protected from fraud and abuse,"[6] then there appears to be a credibility problem. This problem is not of recent vintage. In 1998, the General Accounting Office issued a report charging that the E-Rate program didn't have sufficient safeguards in place to prevent waste and fraud.[7]

It is our understanding that USAC has only audited 40 beneficiaries and service providers to date.[8] When you consider that over 36,000 applications are received annually[9], one can easily see that the audit sample and the staff assigned to monitor the E-Rate program are insufficient to be considered statistically reliable.

It is our understanding that to facilitate application processing, USAC hires temporary workers each year.[10] They are trained in a mere two-week regime and then expected to review billions of dollars of requested support. It appears unreasonable to expect temporary employees with very limited training to effectively learn the nuances of state or local procurement law and the particulars of state or regional contracts.

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[6] FCC's Office of the Inspector General - http://www.fcc.gov/oig/sar902.pdf

[7] The Center For Public Integrity - Special Report Phone fund for schools, libraries riddled with fraud by Bob Williams; Jan. 9, 2003

[8] Id. "USAC has found such problems at many of the 40 beneficiaries and service providers it has audited to date."

[9] According to the State of New Jersey website, more than 36,000 applications were received for the Schools and Library fund in 2002. Source: http://www.state.nj.us/njded/techno/teleact/year5/wave2.htm

[10] Schools, Libraries Call for More E-Rate Reforms by Roy Mark, Internet News, May 9, 2003, http://www.internetnews.com/bus-news/article.php/2203861.

We support a comprehensive audit program for the E-Rate fund that is conducted directly by the FCC. While we understand that this will take both personnel and budgetary commitments[11], we also believe that the integrity and continuation[12] of the program could be challenged if the program is not effectively reviewed on an ongoing basis.

State Funding Cap

Reiterating the comments that the Florida Commission made in April of 2002, the FPSC believes that establishing a new, efficient direction for the E-Rate program could be achieved by focusing on an equitable distribution of funds to each state. We believe that the FCC should consider whether there is merit in establishing a state funding cap. For example, schools and libraries within a state might only have access to an equitable distribution of the $2.25 billion according to the poverty level of the state.

We believe the Act mandates that the funds be distributed to the most economically disadvantaged schools and libraries and that providing a "cap" on the funds could ensure a distribution based on the poverty level of each state. It is our understanding that some applicants presently have the ability to apply for funding that exceeds the eligible support based upon the poverty level of a particular geographic area. Thus, equity is not achieved when funds are no longer available for other equally eligible applicants. The FCC should also consider whether the following administrative operational principles could be put into place for a "state capping" of funds:

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[11]   The FCC's Inspector General's Office estimates it would need to add 15 auditors to the two that are currently working on the E-Rate fund to provide proper oversight of the program. Source: The Center For Public Integrity - Special Report Phone fund for schools, libraries riddled with fraud by Bob Williams; Jan. 9, 2003

[12] In March of 2003, Rep. Tom Tancredo (R-Colo.) introduced a bill (H.R. 1252) that would eliminate the E-Rate that provides $2.25 billion a year in subsidies for technology upgrades in schools and libraries.

A.   Each state would be capped according to its poverty level.

B.   The present USAC administration would continue to administer the funds and approve applicants with an understanding that each state would have a funding cap that could not be exceeded. Funds would be awarded through all priority-one services and then priority-two services, as long as funds were available under the capped amount for that state.

C.   Remaining funds from any state at the end of a funding period would be put back into the "general fund" to be redistributed in the next funding year.

D.   State networks, elementary and secondary schools, and public libraries would have a better opportunity to plan for technology and telecommunications when the amount of funds were known in advance.

E.   Telecommunications companies would be able to address the infrastructure needs of a state by knowing ahead of time the amount of funds that will be available in each state. This would facilitate building a level of infrastructure that ultimately would provide quality service and adequate bandwidth to meet the needs of the applicants.

F.   Program Integrity Assurance (PIA) could assign individuals to each state for the review process. This would allow a very self-contained approach to the review process and allow PIA reviewers to become more familiar with the state infrastructures, contracts and applicants. By working more closely with PIA individuals in the review process, abuse in funding requests and vendor selections would become easier to track and eliminate.

Development of Rules to Limit Equipment Transferability

In the Second Report and Order regarding the Schools and Libraries Universal Service Support Mechanism, the FCC did not address restricting the transfer of equipment[13]. As we have previously commented, the Telecommunications Act of 1996 specifically notes that telecommunications services and network capacity provided to schools and libraries under Section 254(h) "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value."[14] Without change, the rules do not prevent participants in the program from transferring equipment to other entities without charge.

Other commenters and reports from state authorities, schools and libraries, and USAC have indicated that some parties are taking unfair advantage of the current rules by transferring equipment and purchasing new replacement equipment with funds from the program each year. While the FPSC recognizes that there may be some legitimate reasons to upgrade facilities because of technological innovations, manipulation of the program consumes resources that otherwise would have been better targeted for other program applicants.

Given the current circumstances, the FPSC believes it is necessary for the FCC to establish rules governing when and how equipment can be transferred without charge, before seeking to acquire new discounted equipment. It appears that, without imposing restrictions on these transfers of equipment, inadequate incentives exist in the schools and libraries mechanism to prevent wasteful or fraudulent behavior. Conditioning receipt of universal service discounts by ensuring that

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[13] In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, Released: April 30, 2003.

[14] 47 U.S.C. § 254(h)(3).

discounted internal connections are used at the requested location and for the use specified in the application process for a certain period of time would appear appropriate.[15] This change could be made by including additional Form 471 certification reflecting applicant agreement not to transfer equipment within the service life period without a waiver from the Schools and Libraries Division of USAC.

Competitive Bidding Issues

Another issue that relates to waste, fraud, and abuse is in the E-rate program's competitive bidding rules. From discussions with Florida E-Rate officials, it has been noted that the Form 470 process for soliciting competitive bids has not been effective. To the extent that other regions of the country are experiencing insufficient bids through this process, we would recommend that an alternative mechanism be considered. If, for example, USAC were to compile a list of eligible providers by zip code, then all beneficiaries would have ready access to a database of suppliers that could be solicited for bids.

To ensure that the relationship between the vendors and the beneficiaries satisfies the goals of the program, we would also suggest that USAC give explicit notification to all applicants and vendors that the E-Rate program prohibits arrangements in which vendors can provide technology planning and/or procurement management and still benefit financially from the contracts that result. We believe there should be expanded enforcement rules to include consultants who work with schools on their E-Rate qualifications and applications. Increased safeguards should include full

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[15] Charlie Parker, a library specialist with the State Library of Florida who testified before the FCC on May 8th, 2003, said "program participants should face penalties for using subsidized equipment for unintended uses." Source: Regulators examine how to stop fraud and waste in program to help schools connect to Internet by David Ho, AP, May 08, 2003, http://redding.com/news/aptop/stories/20030508aptop081.shtml.

disclosure regarding any conflicts of interest of persons who receive compensation from vendors that participate in the program. This could be accomplished by following the "IRS tax preparer" signature policies for consultants or other non-school or library officials who prepare Forms 470, 471, and 472 on behalf of applicants. USAC could also consider requiring that persons who prepare applications on behalf of applicants must submit a standardized disclosure statement to the applicant, detailing the nature of relationships that the application preparer has with service providers.

Education

To effect the changes contained in these comments, USAC should consider providing additional education for all applicants on best practices. These best practices could include the publication of pricing thresholds considered to be reasonable for common products and services, establish and publish service life guidelines for common products, create an online eligible services list, and establish and publish reasonable standards for warranties or other defined hardware support services for Internal Connections equipment. We believe that enhanced educational efforts about the E-Rate program will promote better program compliance and reduce the reliance on consultants that may have interests that differ from the goals of the E-Rate program.

By publicizing best practices along with the names of service providers and applicants whose practices amount to substantial violations of USAC rules, schools and library officials could stay better informed about both the achievements and the violations of the E-Rate program. By making this information available on its Web site, along with the findings of all final audit reports involving the program, USAC could proactively educate those involved in E-Rate activity.

<u>Conclusion</u>

We agree that the E-rate program has been important in helping schools and libraries across the United States gain access to 21st century learning resources through a variety of technologies. At the same time, we also believe that there are steps that can be taken to improve the current process and to ensure that the funding is being distributed in a fair and equitable manner. These changes should be considered to better guard the program from those who would seek to defraud it, from those who would seek to abuse it, and from those practices and procedures that inadvertently encourage waste.

The FPSC believes the FCC should consider establishing rules governing when and how equipment can be transferred without charge, before seeking to substitute new discounted equipment. As currently structured, the FPSC believes that without imposing restrictions on transfers of equipment, there are insufficient incentives in the schools and libraries mechanism to prevent wasteful or fraudulent behavior. In addition, the FPSC believes that one way to deter waste, fraud, and abuse is to make the current program more transparent. Making available additional data about the recipients of support would build greater confidence that the program is fair.

The FPSC believes that establishing a new, efficient direction for the E-Rate program can be achieved by focusing on an equitable distribution of funds to each state. The FCC should consider whether there is merit in establishing a state funding cap based on poverty. Schools and libraries within a state, in turn, would only have access to an equitable distribution of the $2.25 billion according to the poverty level of the state.

We agree with lawmakers and FCC investigators that there is not enough oversight of the

E-Rate program and that this shortcoming could threaten the worthwhile effort to underwrite

communications services for rural areas and the poor.[16] We believe that it is essential to toughen

enforcement procedures and compliance requirements to address certain problems related to waste,

fraud, and abuse. Changes in both the audit oversight and rules governing competitive bidding

should be considered to better guard the program from those who would seek to defraud it. Lastly,

increased educational outreach will make the E-Rate program, and the rules that govern its

operation, more effective.

Respectfully Submitted,

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FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
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DATED: July 21, 2003

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[16] U.S. Rep. Tom Tancredo (R-Colo.) has proposed legislation (H.R. 1252) that would terminate the
E-Rate program.